



MINUTES

**CITY OF SCOTTSDALE FIRE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
SPECIAL MEETING
10:00 a.m., Thursday, May 31, 2012
Human Resources Pinnacle Training Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Todd Cavner, Elected Member
Steve Springborn, Elected Member

ABSENT: Jeffrey Burg, Citizen Member
Velicia McMillan, Citizen Member/Merit Head

STAFF: Ken Nemec
Chanda Washington

OTHERS: Mike Anthony, Esq.
Hannah Auckland, Esq.
Fire Captain Robert D. Curley, Jr.

Call to order

Chairman Cross called the meeting to order at 10:01 a.m. He stated that the first order of business was the acknowledgement of Board Members Burg and McMillan's excused absences.

Roll call

A formal roll call confirmed the members present as stated above.

Possible Executive Session

Executive Session may occur at any time during this meeting.

1. Review and approval of meeting minutes—May 10, 2012

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE MAY 10, 2012 PSPRS FIRE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND MCMILLAN WERE ABSENT.

2. Review and approval of executive session meeting minutes—March 10, 2012

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE EXECUTIVE SESSION MEETING MINUTES OF THE MAY 10, 2012 PSPRS FIRE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND MCMILLAN WERE ABSENT.

3. Discussion and Vote on the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

Board Member Springborn requested that the Board adjourn into executive session to discuss the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

CLOSED PUBLIC HEARING

Motion to recess into executive session for discussion of the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

BOARD MEMBER SPRINGBORN MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF THE ACCIDENTAL DISABILITY RETIREMENT APPLICATION OF FIRE CAPTAIN ROBERT D. CURLEY, JR. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBERS BURG AND MCMILLAN WERE ABSENT.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

Ms. Washington confirmed that Fire Captain Robert D. Curley, Jr.'s paperwork was in order and the IME physician's report had been received.

In response to Chairman Cross' inquiry regarding whether staff had sent the applicant to the Board's usual IME physician, Ms. Washington explained that he was sent to Medical Consultants Network's neurological physician since the Board's customary IME physician is an orthopedic physician.

Mr. Nemec confirmed that Medical Consultants Network of qualified physicians have been used in many of the City of Scottsdale PSPRS Fire and Police Local Board disability retirement cases.

Chairman Cross invited the Board to discuss the medical documentation received to date on Fire Captain Curley's application.

Board Member Springborn apologized for not being clear regarding his desire to have the IME physician available for questioning during today's meeting, emphasizing his desire to table the discussion until arrangements could be made for the physician to be present at a future meeting.

Chairman Cross invited the Applicant to offer further information to the Board. Ms. Auckland swore in Fire Captain Curley as a witness in his case.

Chairman Cross recalled that the Applicant supplied additional documentation related to the contributing factors that led to his accidental disability.

Fire Captain Curley confirmed that he supplied the same documentation to the IME physician at the time of the IME.

Chairman Cross expressed his concern that although the IME physician received all supporting documentation and his succinct answers to questions 1 and 2 confirmed that the Applicant was unable to perform a reasonable range of duties as a fire captain, his answer to question 3 states that the applicant's injury was not incurred in the performance of his duties, but was the result of his pre-existing condition.

He explained that the supporting documentation reflected that the Applicant's seizure may have occurred because he had low levels of the preventive medication in his system at the time of the accident.

Fire Captain Curley confirmed that the medication was on the lower end of the therapeutic range.

Chairman Cross opined that there was sufficient information for the Board to make a decision on the accidental disability retirement application of Fire Captain Robert D. Curley, Jr. during today's meeting.

Board Member Springborn opined that the IME physician's response to the question regarding whether the Applicant has a physical or mental condition which permanently prevents him from performing a reasonable range of duties confirmed that he does, as a result of epilepsy. According to NFPA 1582, epilepsy is not a condition which permanently disables someone from being a firefighter, pointing out that having a seizure does preclude them from being a firefighter.

Board Member Springborn opined that the IME physician did not truly understand NFPA 1582 and what the question was actually asking him.

Chairman Cross elaborated that the IME physician's response to questions 1 and 2 were favorable for the Applicant, noting that his responses to questions 3 and 4 regarding whether his condition was caused by his employment and whether the condition existed prior to him becoming a firefighter are clear.

Board Member Springborn explained that no one was questioning whether the Applicant had epilepsy, but rather whether the epilepsy was exacerbated by the associated job duties enough to cause the seizure.

He explained that according to Wills v. Pima County PSPRS Board, the work as a firefighter aggravated a pre-existing condition to the extent that the pre-existing condition became disabling.

Board Member Springborn elaborated that the Wills case overturned the Pension Board decision by stating that even though an employee had a pre-existing condition, it was the job duties that aggravated the condition to the point of being disabling. In Fire Captain Curley's case the IME physician references the disease as the disabling factor and does not answer questions related to whether the disease was aggravated by the Applicant's job duties.

Board Member Springborn opined that until he could clarify the IME physician's responses to questions 3 and 4 he could rule on Fire Captain Curley's application.

Chairman Cross recalled that the IME physician's report extensively discusses epilepsy as being the cause of the Applicant's seizures. He pointed out that the doctor had a typo when he states that the epilepsy preceded the Applicant's employment with the City of Phoenix rather than with the City of Scottsdale.

Chairman Cross opined that according to the IME physician's report there was sufficient evidence to make a decision in this matter.

BOARD MEMBER SPRINGBORN MOVED TO TABLE THE DISCUSSION OF THE ACCIDENTAL DISABILITY RETIREMENT APPLICATION OF FIRE CAPTAIN ROBERT D. CURLEY, JR. UNTIL ARRANGEMENTS WERE MADE FOR THE ATTENDANCE OF THE IME PHYSICIAN AT A FUTURE MEETING. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF TWO (2) TO ONE (1). CHAIRMAN CROSS VOTED AGAINST. BOARD MEMBERS BURG AND MCMILLAN WERE ABSENT.

Chairman Cross confirmed that staff would arrange a future meeting wherein the IME physician would be available for questioning by the Board before making their final decision on the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

He suggested that staff choose a date that would allow attendance by all Board members to ensure a complete vote by the Board.

4. Board suggestions for upcoming agenda items.

Chairman Cross confirmed that there were no suggestions for upcoming agenda items.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 10:25 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Fire Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee